

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:)
) Chapter 11
CIRCUIT CITY STORES, INC., *et al.*) Case Nos. 08-35653-KRH
) Jointly Administered
Debtors.)
_____)

LIMITED OPPOSITION TO DEBTOR'S MOTION FOR ORDER

**(I) GRANTING ADMINISTRATIVE EXPENSE STATUS TO
OBLIGATIONS FROM POSTPETITION DELIVERY OF GOODS;**

**(II) AUTHORIZING PAYMENT OF EXPENSES IN THE ORDINARY COURSE
OF BUSINESS; (III) AUTHORIZING DEBTORS TO RETURN GOODS; AND
(IV) ESTABLISHING PROCEDURES FOR RECLAMATION DEMANDS**

Alliance Entertainment, LLC ("Alliance") and Source Interlink Media, LLC ("SIM") hereby submit this limited opposition (this "Opposition"), to the Debtors' Motion for Order under Bankruptcy Code Sections 105(a), 362, 503(b), 507(a), 546(c) and 546(h): (i) Granting Administrative Expense Status to Obligations from Postpetition Delivery Of Goods; (ii) Authorizing Payment of Expenses in the Ordinary Course of Business; (iii) Authorizing the Debtors to Return Goods; and (iv) Establishing Procedures Reclamation Demands [clerk's docket no. 14] (the "Motion"). In support of this Opposition, Alliance and SIM state as follows:

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Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b). Venue of this proceeding is proper in this district pursuant 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 503(b); 507(a), 546(c), and 546(h) of the Bankruptcy Code.

Background and Summary

2. Alliance and Circuit City Stores, Inc. (“Circuit City”) are parties to a Retail Product Services and Supply Agreement, dated June 15, 2007, as amended by Amendment No. 1, dated April 29, 2008, and Amendment No. 2, dated September 15, 2008 (collectively, with exhibits and schedules, the “Alliance Agreement”). Under the Alliance Agreement, Alliance sells compact discs (“CDs”); digital video discs (“DVDs”) and video games (“Gaming”) (collectively, the CDs, DVDs, and Gaming products are referred to herein as the “Goods”), and provides supply chain services to Circuit City.

3. SIM supplies Circuit City with books and magazines.

4. On November 10, 2008 (the “Petition Date”), each of the above-captioned debtors (the “Debtors”)¹ filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors are currently operating their businesses and managing

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512).

their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. A committee of unsecured creditors has been appointed in this case. These cases are being jointly administered under the above-captioned case.

5. On November 13, 2008, the Court entered its Order under Bankruptcy Code Sections 105(a), 362, 503(b), 507(a), 546(c), and 546(h) (I) Granting Administrative Expense Status to Obligations from Postpetition Delivery of Goods; (II) Authorizing Payment of Expenses in the Ordinary Course of Business; (III) Authorizing Debtors to Return Goods; and (IV) Establishing Procedures for Reclamation Demands [clerk's paper no. 133] (the "Order"). The Order provided that the relief was granted on an interim basis with an objection period of fifteen (15) days after entry of the Order.

Relief Requested

6. By this Objection, Alliance and SIM seek to clarify the Order approving the Motion to ensure that the Order in no way limits, alters, amends or forecloses on Alliance's and SIM's statutory rights under section 546(h) of the Bankruptcy Code. Specifically, the Order could be construed to authorize the Debtor to return goods pursuant to Section 546(h) of the Bankruptcy Code for a credit without obtaining consent of the affected vendor.

7. Numbered paragraph 4 of the Order provides:

The Debtors are authorized, but not obligated, under Bankruptcy Code section 546(h), subject to the limitations imposed by any orders of this Court and the prior rights of holders of security interests in such Goods or the proceeds of such Goods under the Debtors' proposed debtor in possession financing agreements and prepetition financing agreements, to the extent of such interests, to return to Vendors Goods that were delivered prepetition for an offset of the purchase price of such Goods against the Vendors' prepetition claims.

See Order ¶ 4. Read literally, Paragraph 4 of the Order could be construed to require Vendors to accept returns of goods irrespective of the Vendors' consent (or lack of consent).

Basis for Relief

8. Section 546(h) of the Bankruptcy Code states in pertinent part:

Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

11 U.S.C. § 546(h) (emphasis added). *See also, In re Century Elecs. Mfg., Inc.*, 263 B.R. 1 (Bankr. D. Mass. 2001)(requiring debtors to prove by a preponderance of the evidence that: (1) the goods sought to be returned were shipped to the debtor pre-petition; (2) the seller's claim against the debtor being offset by the return arose pre-petition; (3) the seller consents to the return of the goods, and; (4) that the return is in the best interests of the estate inasmuch as the return assists in some way the debtor's reorganization efforts, or otherwise maximizes the value of the debtor's estate for the benefit of all creditors).

9. Based on the Debtors' statements during the hearing on November 10, 2008, it appears that the Debtors do not intend to alter the rights of creditors under Section 546(h). However, to avoid uncertainty, the Order should expressly state that the return of any goods by the Debtors are subject to the consent of the vendor/creditor.

Waiver of Memorandum of Law

10. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion, the Alliance requests that the requirement that all motions be accompanied by a written memorandum of law be waived.

No Prior Request

11. No previous request for the relief herein has been made to this Court or any other court.

WHEREFORE, the Alliance respectfully requests that this Court modify its Order to states that the return of any goods by the Debtors pursuant to section 546(h) of the Bankruptcy Code is subject to the content of the respective creditor.

Dated: November 28, 2008

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 2008, I caused copies of the foregoing Objection of Alliance Entertainment Corporation to be sent via electronic mail to the parties on the service list attached hereto as Exhibit "A" and via first class United States mail, postage prepaid, to the parties on the service list attached hereto as Exhibit "B."

/s/ Bradford F. Englander
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Exhibit A

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Exhibit B

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